

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

The State of KANSAS, *et al.*,

Plaintiffs,

v.

UNITED STATES of AMERICA and the
CENTERS FOR MEDICARE & MEDICAID
SERVICES,

Defendants.

Civil Action No. 1:24-cv-00150-DMT-CRH

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS

In their latest motion to dismiss Plaintiffs' claims, Defendants repeat the arguments they have already submitted to the Court in their opposition to Plaintiffs' motion for a stay and preliminary injunction (ECF 61), motion for reconsideration of the Court's request for supplemental information (ECF 90 & 96), and opposition to Plaintiffs' motion for a temporary restraining order (ECF 107). They move to dismiss the case under Federal Rule 12(b)(1) as they claim Plaintiffs lack standing, as well as under Rule 12(b)(3), for improper venue, and under Rule 12(b)(6), for failure to state a claim. In the alternative, if the Court finds some Plaintiffs have standing, but not North Dakota, Defendants request a transfer to another district.

Defendants' motion should be denied. All Plaintiffs, including North Dakota, have standing, and venue is therefore proper in this district.

ARGUMENT

I. All Plaintiffs have standing

As the party invoking jurisdiction, Plaintiffs have the burden to prove standing by a preponderance of evidence. *See Moss v. United States*, 895 F.2d 1091, 1097 (8th Cir. 2018). Plaintiffs

fully explained in their motion for a stay and preliminary injunction (ECF 35), reply (ECF 81), and in oral argument (ECF 84) that each Plaintiff State has standing in this case and that venue is therefore proper in this district. And at the Court's request, Plaintiff North Dakota submitted supplemental information further detailing the harms it would suffer as a result of Defendants' Final Rule. ECF 103 & 111. And Plaintiffs further elaborated on standing in their motion for a temporary restraining order. ECF 105. These filings are incorporated by reference, to avoid repetitive briefing.

Plaintiffs established that all Plaintiff States have standing in this case. Kentucky, Idaho, and Virginia operate their own Affordable Care Act exchanges and will incur expenses processing applications, updating eligibility systems, and providing customer service for newly eligible DACA recipients. *See* ECF 35 at 15-16; ECF 81 at 1-4. A declaration by Adam Meier provided additional evidence of these costs, beyond what appears in the administrative record. *See* Meier Decl. ECF 35-2. And the Final Rule itself acknowledges these costs. *See* 89 Fed. Reg. at 39,424.

The remaining Plaintiff States have standing due to the costs they will incur to provide social services, including drivers' licenses and public education, to DACA recipients and their dependents who choose to continue to reside in the States, rather than emigrating, because they receive valuable benefits under the Final Rule. *See* ECF 35 at 16-18; ECF 81 at 5-8. Evidence of these costs to the States was also provided in a declaration by immigration expert Steven Camarota. *See* ECF 35-1. And once Defendants identified the DACA recipients residing in North Dakota, Plaintiffs submitted detailed information about the costs to North Dakota of providing drivers' licenses and public education to DACA recipients and their dependents. *See* ECF 103 & 111.

Plaintiffs have established standing for each State in this case. Defendants' motion to dismiss under Rule 12(b)(1) should therefore be denied.

II. Venue is proper in this district

When a federal agency is a defendant, venue is proper in any district in which a Plaintiff resides. 28 U.S.C. § 1391 (e)(1). As discussed above, including in ECF 35 and ECF 81, incorporated by reference, Plaintiff North Dakota has standing and resides in this district. Additionally, when one plaintiff has standing, that is sufficient to establish the Court's jurisdiction. *See Nebraska v. Biden*, 143 S.Ct. 2355, 2365 (2023). Therefore, venue is proper in the District of North Dakota.

Defendants' motion to dismiss under Rule 12(b)(3), or alternatively to transfer the case to another district, should be denied.

III. Defendants do not meet the standard for 12(b)(6) dismissal

Fed. R. Civ. P. 12(b)(6) requires dismissal when a party has failed to state a claim upon which relief can be granted. To survive a motion to dismiss, the complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 555 U.S. 662, 678 (2009) (internal quotations omitted). A motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Ulrich v. Pope County*, 715 F. 3d 1054, 1058 (11th Cir. 2013).

In their complaint, Plaintiffs assert legally cognizable claims on which relief can be granted. Further, Plaintiffs have argued, in their motion for a stay and preliminary injunction (ECF 35), and their reply (ECF 81), that they are likely to succeed on the merits of their claim that the Final Rule violates the APA because it is not in accordance with law and is arbitrary and capricious. The reasoning in those filings, incorporated by reference, which supports

Plaintiffs' claim that they are likely to succeed on the merits also supports a finding that Plaintiffs have stated claims on which relief can be granted. Dismissal under Rule 12(b)(6) is therefore not appropriate.

Defendants have not actually made any argument in favor of a dismissal under Fed. R. Civ. P. 12(b)(6). They point to ECF 61 at 21-27—their opposition to Plaintiffs' motion for a stay and preliminary injunction—as support for their argument that Plaintiffs have failed to state a claim, but their opposition did not refer to the standards for 12(b)(6) dismissal and fails to set out any justification for dismissal under the appropriate standard. Instead, Defendants argued only that Plaintiffs were not likely to succeed on the merits for purposes of a stay and preliminary injunction. Even if the Court accepted that argument, it does not follow that Plaintiffs have failed to state a claim under any set of facts, as required for dismissal under Rule 12(b)(6). Their motion to dismiss should be denied accordingly.

CONCLUSION

For the foregoing reasons, Plaintiffs ask this Court to deny Defendants' motion to dismiss on all grounds, and deny Defendants' motion to transfer.

Respectfully submitted,

KRIS W. KOBACH
Attorney General of Kansas

/s/ James R. Rodriguez
James R. Rodriguez, Kan. SC No. 29172
Assistant Attorney General
Abhishek S. Kambli, Kan. SC No. 29788
Deputy Attorney General
Kansas Office of the Attorney General
Topeka, Kansas 66612-1597
Phone: (785) 296-7109
Email: jay.rodriguez@ag.ks.gov
abhishek.kambli@ag.ks.gov
Counsel for the State of Kansas

DREW H. WRIGLEY
North Dakota Attorney General

/s/ Philip Axt

Philip Axt
Solicitor General
Office of Attorney General
600 E. Boulevard Ave Dept. 125
Bismarck, North Dakota 58505
Phone: (701) 328-2210
Email: pjaxt@nd.gov
Counsel for the State of North Dakota

STEVE MARSHALL
Alabama Attorney General

/s/ Robert M. Overing

Robert M. Overing
Deputy Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Avenue
P.O. Box 300152
Montgomery, Alabama 36130-0152
Phone: (334) 242-7300
Fax: (334) 353-8400
Email: Robert.Overing@alabamaag.gov
Counsel for the State of Alabama

TIM GRIFFIN
Arkansas Attorney General

/s/ Nicholas J. Bronni

Nicholas J. Bronni
Solicitor General
Dylan L. Jacobs
Deputy Solicitor General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-2007
Email: Nicholas.bronni@arkansasag.gov
Counsel for the State of Arkansas

ASHLEY MOODY
Florida Attorney General

/s/ Natalie Christmas

Natalie Christmas
Senior Counselor
Florida Attorney General's Office
PL-01 The Capitol
Tallahassee, FL 32399
Phone: (850) 414-3300
Fax: (850) 487-2564
Natalie.christmas@myfloridalegal.com
Counsel for the State of Florida

RAÚL R. LABRADOR
Attorney General of Idaho

/s/ Alan Hurst

Alan Hurst
Solicitor General
Matthew L. Maurer*
Deputy Attorney General
Office of the Attorney General
PO Box 83720,
Boise, Idaho 83720
Phone: (208) 334-2400
Email: Alan.Hurst@ag.idaho.gov
Matthew.Maurer@ag.idaho.gov
Counsel for the State of Idaho

THEODORE E. ROKITA
Attorney General of Indiana

/s/ James A. Barta

James A. Barta
Solicitor General
Indiana Attorney General's Office
IGCS – 5th Floor
302 W. Washington St.
Indianapolis, IN 46204
Phone: (317) 232-0709
Email: james.barta@atg.in.gov
Counsel for the State of Indiana

BRENNA BIRD
Attorney General of Iowa

/s/ Eric H. Wessan
Eric H. Wessan
Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
Phone: (515) 823-9117
Email: Eric.Wessan@ag.iowa.gov
Counsel for the State of Iowa

ANDREW BAILEY
Attorney General of Missouri

/s/ Joshua M. Divine
Joshua M. Divine
Solicitor General
Office of the Missouri Attorney General
Supreme Court Building
207 West High Street
Jefferson City, Missouri 65102
Phone: (573) 751-8870
Email: Josh.Divine@ago.mo.gov
Counsel for the State of Missouri

MICHAEL T. HILGERS
Attorney General of Nebraska

/s/ Zachary B. Pohlman
Zachary B. Pohlman
Assistant Solicitor General
Office of the Nebraska Attorney General
2115 State Capitol
Lincoln, Nebraska 68509
Phone: (402) 471-2682
Email: Zachary.Pohlman@Nebraska.gov
Counsel for the State of Nebraska

RUSSELL COLEMAN
Attorney General of Kentucky

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General
Kentucky Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky
Phone: (502) 696-5617
Email: Zachary.zimmerer@ky.gov
Counsel for the Commonwealth of Kentucky

AUSTIN KNUDSEN
Attorney General of Montana

/s/ Peter M. Torstensen, Jr.
Peter M. Torstensen, Jr.
Deputy Solicitor General
Christian B. Corrigan
Solicitor General
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
Phone: (406) 444.2026
Email: peter.torstensen@mt.gov
Counsel for the State of Montana

JOHN M. FORMELLA
Attorney General of New Hampshire

/s/ Brandon F. Chase
Brandon F. Chase
Assistant Attorney General
New Hampshire Department of Justice
1 Granite Place – South
Concord, New Hampshire 03301
Phone: (603) 271-3650
Email: brandon.f.chase@doj.nh.gov
Counsel for the State of New Hampshire

DAVE YOST
Attorney General of Ohio

/s/ T. Elliot Gaiser
T. Elliot Gaiser
Ohio Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Phone: (614)466-8980
Fax: (614) 466-5087
Email: thomas.gaiser@ohioago.gov
Counsel for the State of Ohio

MARTY J. JACKLEY
Attorney General of South Dakota

/s/ Clifton Katz
Clifton Katz
Assistant Attorney General
Office of the Attorney General
State of South Dakota
1302 E. Hwy. 14, Suite #1
Pierre, South Dakota 57501
Phone: (605) 773-3215
Email: Clifton.katz@state.sd.us
Counsel for the State of South Dakota

ALAN WILSON
Attorney General of South Carolina

/s/ Joseph D. Spate
Joseph D. Spate
Assistant Deputy Solicitor General
Office of the South Carolina Attorney General
1000 Assembly Street
Columbia, South Carolina 29201
Phone: (803) 734-3371
Email: josephspate@scag.gov
Counsel for the State of South Carolina

JONATHAN SKRMETTI
Attorney General and Reporter of Tennessee

/s/ Brian Daniel Mounce
Brian Daniel Mounce
Strategic Litigation Counsel &
Assistant Solicitor General
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
Phone: 615-741-1400
Email: Brian.mounce@ag.tn.gov
Counsel for the State of Tennessee

KEN PAXTON
Attorney General of Texas

Brent Webster
First Assistant Attorney General
Ralph Molina
Deputy First Assistant Attorney General
Austin Kinghorn
Deputy Attorney General, Legal Strategy
Ryan D. Walters
Chief, Special Litigation Division

/s/ David Bryant
David Bryant
Senior Special Counsel
Munera Al-Fuhaid
Special Counsel
Office of Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711
Phone: (512) 936-1700
Email: David.Bryant@oag.texas.gov
Munera.Al-Fuhaid@oag.texas.gov
Counsel for the State of Texas

JASON S. MIYARES
Attorney General of Virginia

/s/ Kevin M. Gallagher
Kevin M. Gallagher
Principal Deputy Solicitor General
Virginia Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
Phone: (804) 786-2071
Fax: (804) 786-1991
Email: kgallagher@oag.state.va.us
Counsel for the Commonwealth of Virginia